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In the Supreme Court of the United States

OCTOBER TERM, 1936

No.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA

W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA

and

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOT THE FIRST CIRCUIT

The Worcester County Trust Company, Executor u/will of Robert H. Hunt, prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the First Circuit in the above case rendered March 15, 1937, reversing the decision of the United States District Court for the District of Massachusetts (R. 26), reported in 14 F. Supp. 754. The opinions of the Circuit Court (R. 43, 57) are not yet officially reported.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by

STATEMENT

Robert H. Hunt died on June 11, 1935. By his will the petitioner, formerly called Worcester Bank & Trust Company, was named executor; it duly qualified and was appointed executor by the Worcester County Probate Court on June 26, 1935, the date of the allowance of the will in Massachusetts. The deceased left real estate and bank deposits in California and bank deposits and considerable other intangible property in Massachusetts, the bulk of which is in the custody of the petitioner executor (R. 3). Said executor thereafter procured ancillary probate to be taken out in California (R. 3).

The tax officials of each State are seeking the benefit of the petitioner's fiduciary obligations as executor to settle all inheritance taxes. The Tax Commissioner of Massachusetts asserts a succession tax due that State based on his claim of domicile in Massachusetts. The tax officials of California assert an inheritance tax due that State based on their claim of domicile in California.

The petitioner executor, by reason of such conflicting and inconsistent claims, filed a bill in the nature of interpleader (R. 2) in the District Court for the District of Massachusetts and secured an order (by Sweeney, J.) (R. 12) restraining the tax officials of both States from taking steps to assess, determine or collect inheritance taxes due from the Hunt Estate. The bill prayed particularly for a determination of the domicile of the decedent in order to

ascertain which tax officials are proceeding illegally (R. 6).

The Tax Commissioner of Massachusetts entered his general appearance and answered that Hunt died domiciled in Massachusetts (R. 20). The tax officials of California appeared specially, objecting to the jurisdiction of the District Court, and moved to vacate the restraining order and to dismiss the bill of complaint on the ground that it constituted a suit against a sovereign State and was therefore prohibited by the Eleventh Amendment to the United States Constitution. They did not deny that the California probate court proceedings are ancillary or of a non-resident estate. The record indicates no claim as yet advanced to or pending in any California court that Robert H. Hunt died domiciled in that State. The motion to dismiss was denied after hearing and an injunction issued on April 28, 1936 (R. 24). The opinion of the District Court (by Brewster, J.) was entered April 27, 1936, upholding the jurisdiction of that Court (R. 26).[1]

The Tax Commissioner of Massachusetts declined to join in the appeal taken by the tax officials of California to the Circuit Court of Appeals for the

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[1]If Section 266 of the Judicial Code required a three-judge court, the Circuit Court of Appeals erred in entertaining the appeal and this Court should reverse the decision below with directions to remand to the District Court. *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10. But see Section 24—Twenty-sixth (c) of the Judicial Code as amended January 20, 1936, *infra* p. 5, 6, and R. p. 7.

First Circuit. The record discloses that he was not made an appellee (R. 39). Prior to argument the California tax officials petitioned this Court for a writ of certiorari to review the decision of the District Court. The Tax Commissioner of Massachusetts filed a Brief Amicus Curiae. On October 12, 1936, the petition was denied. *Ray L. Riley et al.* v. *Worcester County Trust Co.*, 299 U. S. , 57 S. Ct. 29. The case proceeded to argument before the Circuit Court of Appeals which by opinion dated March 15, 1937 (by Bingham, C. J., Wilson, J. concurring) reversed the District Court with directions that "The order of the District Court granting a temporary injunction is vacated and the case is remanded to that Court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 59). Judge Morton dissented (R. 57). On April 2, 1937 the Tax Commissioner of Massachusetts filed in the Circuit Court an application to be restored as a party respondent which was on April 5, 1937 denied by the following order: "The application of Henry F. Long, Commissioner of Corporations and Taxation, filed April 2, 1937, in this case, is denied, without prejudice to renew his application in the Supreme Court of the United States if such Court takes the case on certiorari" (R. 60).

QUESTIONS PRESENTED

1. Whether, where the tax officials of California and Massachusetts each claim that a decedent died

domiciled in their State and each claim and threaten to collect state inheritance taxes on a resident basis, the Federal District Court of Massachusetts was given jurisdiction by Section 24 of the Judicial Code as amended January 20, 1936, upon petition by the executor, prior to institution of tax determinative proceedings in their respective state courts, to enjoin such officials from attempting the collection of both taxes until the issue of domicile is decided by that Court.

2. Whether the threatened collection of both such State taxes involves a violation of the Fourteenth Amendment.

3. Whether if such jurisdiction was so given by said statute, the suit is against a State in violation of the Eleventh Amendment.

STATUTE INVOLVED

Section 24 of the Judicial Code, as amended by the Act of January 20, 1936, provides in part:

> The district courts shall have original jurisdiction as follows:
>
> *****
>
> Twenty-sixth. —(a) Of suits in equity begun by bills of interpleader or bills in the nature of interpleader duly verified, filed by any person *** being under any obligation written or unwritten to the amount of $500 or more, if—
>
> (i) Two or more adverse claimants, citizens of different States, are claiming to be entitled

*** to any one or more of the benefits arising *** by virtue of any such obligation; and

(ii) The complainant *** (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

*****

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State Court or in any United States court on account of such *** obligation until the further order of the court;

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The statute is printed in full at pages 7–9 of the Record.

SPECIFICATION OF ERRORS

The court below erred—

1. In construing the allegations of the complaint as treating the respondent tax officials solely as agents of the States rather than as individuals.

2. In regarding the complaint as an attempt to implead the States of California and Massachusetts as adverse claimants.

3. In ruling that assessment and collection of inheritance taxes by both sets of tax officials acting in accordance with the laws of their respective States, but based on inconsistent findings as to the decedent's domicile, would not deprive the complainant of property without due process of law.

4. In ruling that by denial of certiorari in *Dorrance et al.* v. *Martin*, 298 U. S. 678, this Court "must have concluded" that collection of two inheritance taxes based on inconsistent determinations of domicile "was not in violation of the due process and equal protection clauses of the Fourteenth Amendment."

5. In ruling that the respondents, even if regarded as individuals, are required to have adverse claims.

6. In ruling that the District Court could not issue a final decree without affecting the interest of the State of California.

7. In ruling that the proceeding in the District Court was not authorized by the Interpleader Act of January 20, 1936.

8. In ruling that the District Court had no jurisdiction to entertain the complaint.

9. In remanding the case to the District Court with directions to dismiss the bill for want of jurisdiction.

REASONS FOR GRANTING THE WRIT

I

Error was committed by the court below in deciding questions of federal law which are of such great importance in the administration of inheritance taxation throughout the country that they should be settled by this Court. The recent litigation involving the Dorrance Estate and the current proceedings in this Court (Original No.) concerning the estate of Edward H. R. Green, late of New York, Texas, Massachusetts or Florida have served to focus attention upon the dilemma facing the personal representatives of a decedent whose domicile may be in any one of two or three or four states. The injustice of the imposition of inheritance taxes upon the entire estate by two or more state tax officials, each *often as uncertain of the domicile as the executor* but each relying on a claim of domicile inconsistent with the other, is generally conceded. The widespread concern of state tax officials is clearly presented in the report of a committee of the National Tax Association quoted in part in Appendix B, *infra*, p. 18. Executors throughout the country are increasingly often facing the problem of duplicate inheritance taxation. A typical case is pending in the United States District Court for the District of New Jersey, Equity No. 4805, *Nevin, Executor et al* v. *Martin, Tax Commissioner of New Jersey et al.*, where after collection of an inheritance tax by Pennsylvania, injunctive relief is sought against duplicate taxation

of the estate by the New Jersey officials. The California tax officials (respondents herein) recognized the public importance of this problem in their petition for certiorari heretofore filed in this Court in this case as No. 215, October Term, 1936. See 299 U. S. 57 S. Ct. 29. We have reprinted a pertinent portion of their petition and brief in support of that petition in Appendix A, *infra*. p. 16.

A probable solution to this problem is presented in the instant case. The January 20, 1936 Act made extensive amendments to the so-called Federal Interpleader Act and the Act as so amended provides an apt means of bringing before an impartial Federal forum the officials of the various States, so that the basic question of domicile may be determined. This statute as so amended has yet to be presented to this Court for construction. As presented in the instant case the question of construction is inextricably entwined with the question of the construction of the Eleventh Amendment to the United States Constitution. The majority opinion below was that the suit was against the sovereign States in violation of that Amendment and that there were no individual adverse claimants to be interpleaded under the statute. It denied, moreover, the petitioner's contention expressly pleaded at the outset, that collection of such duplicate or double taxes would violate the Fourteenth Amendment, a most important question of federal law now squarely presented to this Court for the first time.

These vital issues of federal law demand consideration of this Court. The present case is one of first impression. Comment upon it in legal periodicals is far from uniform. See *49 Harvard L. Rev. 1378; 50 Harvard L. Rev. 956 at 960; 45 Yale L. J. 1176; 11 Temple L. Q. 103.* The five judges who have considered it have taken widely divergent views. The decision below in the First Circuit should not be the final word on the questions. Similar interpleader petitions under the 1936 Amendment are now pending in United States District Courts in Georgia, Maine and Iowa.[2] Many other cases may be brought (see Appendix A. *infra* p. 16). The denial on October 12, 1936 of the petition by the California respondents for certiorari was at a time when the case had not received the thorough attention which has now been disposed upon it. Considered opinions by the District Judge and by the majority and minority of the Circuit Court of Appeals are contained in the record. Nothing would be gained by further postponement of consideration by this Court for the inevitable conflicting decision of some other Circuit Court of Appeals.

The need of an authoritative decision on the avail-

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[2]District Court of the U. S. for the Southern District of Georgia, No. 343—*Spalding and Riley, Executors* v. *Parker et al.* (Georgia and New York taxes). District Court of the U. S. for the District of Maine, No. 67—*Hartshorne, Executor* v. *Chapman et al.* (Maine and ~~Florida~~ New York taxes). District Court of the U. S. for the Northern District of Iowa, No. 198—*Boyer, Executor* v. *Wegman et al.* (Iowa and ~~California~~ Oregon taxes).

ability of this remedy under the interpleader statute for the injustice of duplicate inheritance taxation is not diminished by the existence of the other avenue of approach being used by the State of Texas in the Green Estate litigation in Original No. now pending before this Court. As pointed out by the Attorney General of Texas, his position is based upon the lack of assets in his State. In the instant case there are assets of considerable value in both California and Massachusetts, and an original proceeding by either State might well be unavailable as it was in *New Jersey* v. *Pennsylvania*, 287 U. S. 580.

II

Error was committed by the court below in deciding questions of federal law in conflict with applicable decisions of this Court. The series of decisions in this Court which culminated in *First National Bank* v. *Maine*, 284 U. S. 312, established the constitutional principle that one State alone, that in which the decedent was domiciled at death, may collect an inheritance tax upon all his intangible property. The due process clause of the Fourteenth Amendment is there held to prohibit the imposition of an inheritance tax upon intangibles by the officials of any State except that of the domicile.

In spite of these authoritative decisions the court below expressly held that if there should be a collection of duplicate California and Massachusetts inheritance taxes in the instant case, each based

upon a finding of local domicile and enforced in accordance with the statutes of the State concerned, such collection would not deprive the petitioner of property without due process of law. To hold such inconsistent judicial findings of domicile "due process of law" is contrary to the spirit and decision in the *First National Bank* case.

Equally evident is the conflict of the decree below with those decisions of this Court illustrated by *Ex parte Young*, 209 U. S. 123, and *Sterling* v. *Constantin*, 287 U. S. 378, which have determined, as stated in the latter case at p. 393 that "where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief." In the recent case of *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, this Court found no difficulty in enjoining the tax officials of Pennsylvania from collecting an improper tax. Such an official lacks the immunity of the sovereign State and stands exposed in his individual capacity. Yet the Circuit Court of Appeals below, in complete disregard of this well established doctrine, held that the present suit is against the sovereign States of California and Massachusetts and therefore barred by the Eleventh Amendment. This error underlies the Circuit Court's exaggerated fear lest the equitable remedy sought by the executor prove ineffective

even if granted since no decree may issue against a sovereign State. In practice in such cases as *Sterling* v. *Constantin* and *City Bank Farmers Trust Co.* v. *Schnader, supra,* decrees enjoining wayward officials have proved sufficient to discourage similar action by succeeding officials in the name of the State. These cases demonstrate the error of the court below in questioning the adequacy of an equity decree or decrees which can require the executor to perform its obligations as to proper taxes and enjoin any respondent officials from further efforts to illegally collect the tax claimed by them.

In *United States* v. *Carver,* 260 U. S. 482, 490, it was stated "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." This well established rule was entirely disregarded by the court below which sought at length to interpret this Court's denial of certiorari in *Dorrance et al* v. *Martin,* 298 U. S. 678, and to a great extent based its decision in the present case upon that denial as authority. The majority opinion below states "And in denying certiorari the Supreme Court must also have concluded that the mere fact that the respective tax officials and courts of the two States had determined that the domicile of Dorrance, at the time of his death, was in their respective States, and that such determinations, assessments, and collection of the two taxes, based on inconsistent determinations, was

not in violation of the due process and equal protection clauses of the Fourteenth Amendment."[3] Such misconstruction of this Court's action in the *Dorrance* case should not be permitted to stand uncorrected.

III

Error was committed by the Court below in not distinguishing between the respective limitations of the Eleventh and Fourteenth Amendments, as heretofore judicially defined by this Court. The Court below unduly stresses the official positions of the several respondents—as agents and representatives of the respective States of Massachusetts and California and, erroneously relying on a line of cases based on *In re Ayers*, 123 U. S. 443, concludes that the action is against the States and that the States themselves have been impleaded. But the Court below fails to take into consideration the exact scope and effect of the immunities granted by the Eleventh Amendment as affected by the limitations of the later Fourteenth Amendment, developed by this Court in *Ex parte Young*, 209 U. S. 123, 150, and subsequent cases, such as *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, 246. We submit the opinions of the District Court and of the minority of the Circuit Court of Appeals more nearly follow the judicial construction given these Amendments by this Court.

Wherefore your petitioner prays that a writ of

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[3] In the present case there has been no State court determination of taxes based upon domicile.

certiorari issue to the United States Circuit Court of Appeals for the First Circuit.

Respectfully submitted,

MERRILL S. JUNE
BRADLEY B. GILMAN
Attorneys for the Petitioner
340 Main Street
Worcester, Mass.

APPENDIX

A.

Reason for granting writ and statement by counsel for the California tax officials in their petition and brief in support seeking a writ of certiorari (No. 215, October Term, 1936) in this identical case at pp. 6 and 11:

> "3. It is of equally great importance to the estates of decedents in the many and ever increasing double domicile situations scattered over this country that the questions raised by this case be finally determined and settled by this Court so that they may know whether or not this Interpleader Act furnishes a proper method by which they may find relief from such a situation as existed with respect to the Dorrance estate."

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> "As a result of a recent inquiry directed by the petitioners' attorneys to the inheritance tax officials of the several States on the subject of double-domicile situations, it appears that there are many such situations where such an issue has already been raised or is likely to be raised in the near future and that there have been many others in recent years which have been disposed of in one way or another. The reports from the thirty States which have answered show the following as to the number of pending or prospective cases, after eliminating duplicating items, which cases involve in the aggregate taxes amounting to several hundred thousand dollars:

California	The case at bar with Massachusetts; 3 others with Oregon
Connecticut	10 with New York; 1 with Pennsylvania; 2 with Florida; 1 with Massachusetts; 1 with District of Columbia; 1 with New York and New Jersey.
Florida	Several with Pennsylvania.
Illinois	4 with California.
Kansas	1 with Wyoming.
Maine	2 or 3 with New York.
Massachusetts	(In addition to the case at bar) 1 with Vermont.
Mississippi	1 with Colorado.
Montana	Likely to have several with California.
New Hampshire	2 with Vermont.
New Jersey	1 suit pending with Pennsylvania; a score or more of such situations pending, principally involving Pennsylvania, New York or Connecticut.
Oregon	1 with Washington: 1 with Illinois.

"The answers also have indicated a keen interest in the case at bar and a desire to be kept in touch with its progress; have emphasized the great public importance of the question involved; and have expressed the hope that the question as to the applicability of the Interpleader Act, and its constitutionality if applicable, will be passed upon by this Court as soon as possible.

B.

Extract from 1935 report of National Tax Association Committee on Double Domicile in Inheritance Taxation (of which committee the respondent Riley was a member), reported in full in Commerce Clearing House Inheritance, Estate and Gift Tax Service, 6th Edition, Old Volume IV, Page 20609, Paragraph 4377.

"Your committee believes that this situation (i.e., such a double domicile situation as exists in the case at bar) arises with increasing frequency in this country. Among its causes are the increasing mobility of the American people, and the increasingly vast expenditures by the several states, which lead to a chaotic jumble of drastic revenue laws varying from state to state, with increasing strictness of enforcement, which in turn causes pressure to be put on individuals to minimize their taxes as much as they lawfully can. No blame can attach to individuals for doing this, and it is being increasingly done, not merely by very wealthy people, but by persons of only moderate riches. As between New York and Connecticut, for example, inquiries from taxpayers come almost every day to the tax commissioners of one state or the other as to the relative advantages of being domiciled in one state or the other. Tax consciousness, as well as tax evasion or tax avoidance is growing.

"We may also point out that this problem applies not merely to death taxes, but to income taxes and other forms of excise taxation."

* * * * * * *

"Double domicile cases are not of great frequency but in the opinion of your Committee are constantly growing more common. The essential injustice of a finding of double domicile is so striking that the National Tax Association deemed it advisable to appoint a Committee. In view of all the circumstances, the Committee will not hesitate to propose a remedy merely because it will involve time, trouble, and expense. If there is an evil here, it cannot be cured by a wave of the hand, or by passing a resolution."